

SUMMARY OF MDL-1355 TERM SHEET¹

What conditions must be met before the settlement program goes into effect?

The defendants agreed to the settlement program only on the condition that most filed federal claims and a number of “tolled” claims are resolved through the settlement process. Accordingly, the following number of claimants must agree to participate in the program by October 29, 2004, for the program to go into effect:

1. 85% of the 300 death cases filed in federal court.
2. 75% of the 4000 total cases filed in federal court.
3. 12,000 of the 36,000 claims on statute of limitations tolling agreements.

If by October 29, 2004, the number of plaintiffs in federal cases as of February 1, 2004, and claimants in tolled claims enrolled in the Program, does not meet the minimum benchmarks, as stated above, the settlement program does not go into effect.

How much money will be available to pay claims?

If the minimum enrollment benchmarks are met, the total amount available to pay all claims out of the settlement fund will be \$69.5 million. If the number of claimants in federal cases as of February 1, 2004 and claimants in tolled claims enrolled exceeds the minimum, the amount contributed to the settlement fund by the defendants to pay claims will increase in stages up to a maximum of \$90 million. (The settlement fund reaches \$90 million if 100% of the current federal cases are enrolled.)

If I enroll, what happens to my case?

If you enroll in the settlement program, any pending lawsuit will be dismissed and your claims then will be resolved under the terms of the settlement program. You will need to assist us in obtaining medical records and completing a settlement claim form so that your claim can be evaluated by a Medical Review Panel and the Special Master. You will be asked to sign an unconditional release against the defendants and your lawyers will sign an order of dismissal of the entire case, with prejudice. These documents will be held in escrow by the defense counsel. The dismissal order will be filed and the releases will become effective only when a final determination

¹ This document is only a summary and does not change or modify the settlement program. Please refer to the MDL-1355 Term Sheet which contains the entire settlement program and controls the terms of the settlement. You may access the full settlement Term Sheet on the court’s website at “<http://propulsid.laed.uscourts.gov>”.

of your claim is made by the Medical Review Panel or the Special Master.

Enrolling in the settlement program is an irrevocable decision to accept whatever award, if any, is made under the program.

What must I prove to receive compensation?

To receive compensation, a claimant must show:

- A. Evidence of an “event,” defined as death, cardiac arrest, TdP (Torsades de Pointes), ventricular fibrillation, or sustained ventricular tachycardia; and
- B. Evidence that Propulsid was ingested no longer than 72 hours before the event, and that Propulsid was a substantial contributing cause of the event.

How will the claims-evaluation process work?

Claims will be evaluated in a two-step process: (1) a determination of ingestion and causation; and (2) a determination of damages.

First, a Medical Review Panel will decide if the medical records and claim form submitted as your claim documentation demonstrates adequate evidence of ingestion and causation. If they do not, then your claim will be dismissed and you will receive no compensation (although your attorneys may receive a partial cost reimbursement of \$250 payable from an administrative fund). If it does show sufficient evidence of ingestion and causation, then the Medical Review Panel will perform further evaluation and assign the claim to one of several categories, called “Tiers.” These tiers are described below. It will then be referred to the Special Master to determine the amount of compensation you will be awarded.

What categories of claims are compensable?

Tier I

- Death cases only.
- Cause of death must be more consistent with primary ventricular arrhythmia than with any other cause.
- Propulsid must be a substantial contributing cause of the ventricular arrhythmia.

Tier II
Nonfatal cardiac arrest

LEVEL A

- No documented previous cardiac arrest, MI, or myocardial ischemia.
- No documented high risk of cardiac arrest before starting on Propulsid.
- Arrest more consistent with primary ventricular arrhythmia than any other cause.
- Propulsid was a substantial contributing cause of the arrhythmia.
- The arrest was witnessed by a health care provider, or required CPR or defibrillation, or was electronically documented.

LEVEL B

- Risk factors for cardiac arrest, but no documented previous cardiac arrest.
- Arrest more consistent with primary ventricular arrhythmia than any other cause.
- Propulsid was a substantial contributing cause of the ventricular arrhythmia.
- Documented medical treatment following the arrest.

Tier III
Primary ventricular tachycardia

- Must be sustained v-tach, TdP (polymorphic v-tach), or v-fib.
- Must be documented by a monitoring device strip or report of what a monitoring device showed.
- Propulsid was a substantial contributing cause of the arrhythmia.
- Documented medical treatment for the event.

What if my claim is not assigned to Tier I, Tier II, or Tier III?

You will not receive any compensation. But your lawyers may receive a \$250 cost-reimbursement payment from an administrative fund established in the settlement program.

Who serves on the Medical Review Panel?

The Medical Review Panel consists of six physicians – three to be selected by the Plaintiffs’ Steering Committee and three to be selected by the defendants. Each panel member must be a cardiologist, an internist, or an electrophysiologist.

Each claim will be evaluated by two members of the Panel – one of the three appointed by the plaintiffs and one of the three appointed by the defendants. If the two doctors assigned to a claim cannot agree, then the Special Master will appoint a third physician to break the tie.

Who is the Special Master?

The Special Master is Patrick Juneau, an independent (no association with plaintiffs or defendants) attorney appointed by the court, who has been in charge of the Propulsid MDL mediation program for more than a year.

What will the Special Master consider when determining the amount of an award?

The Special Master will decide the amount of compensation to award to any claimant. In making that determination, he may consider both economic and non-economic tort theories of recovery. The Special Master may not consider or award punitive damages.

What if the total amount awarded by the special master exceeds the amount in the settlement fund?

The amount awarded by the Special Master for a claim is the amount you will receive, as long as the total amount of funds in the settlement program is enough to compensate all claimants who the Special Master determines are entitled to compensation. If the sum of all claimants' awards exceeds the total amount of funds in the settlement program, then each claimants' award will be reduced on a pro rata (proportional) basis, so that all claimants are treated fairly.

When will the settlement awards be paid?

We expect a portion of each award to be paid very shortly after the Special Master makes a determination of a claimant's award. The balance of the claimant's award will be withheld pending a final calculation of all awards to all claimants and payment of any liens. The date for the payment of the balance has not yet been determined.

Will I owe legal fees or costs?

If you are compensated from the Settlement Fund, you will owe attorneys fees and costs as set forth in the contingency-fee agreement between you and our firm along with a 6% MDL fee.

In addition, Court Appointed Plaintiffs' Steering Committee also may be entitled to receive a fee approved by the court and paid by the defendants for the work we performed on court-appointed MDL committees. Any such additional fee will not reduce the amount of your recovery.

If you enter the settlement program and do not receive an award, you will not, under our fee agreement, be responsible for paying any fee or reimbursing our firm for any costs that we advanced on your behalf. But our firm might receive a \$250 cost-reimbursement payment directly from the fund.